

## **CABINET FOR WORKFORCE DEVELOPMENT**

### **Department of Vocational Rehabilitation**

#### **781 KAR 1:030. Order of Selection and Economic Need Test for Vocational Rehabilitation Services.**

RELATES TO: 29 USC 706(8)(A); 29 USC 721(a)(5); 29 USC 721 (a)(15)A, B, C; 29 USC 721 (a)(21)(A); 34 CFR 361.36; 34 CFR 361.54; KRS 151B.190, (b), (c),

STATUTORY AUTHORITY: 29 USC 709(c); KRS 151B.185(2), (3), 151B.195(1))

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. 34 CFR 361.36(c) requires the department to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 CFR 361.36(d) established federal guidelines for the imposition of an order of selection. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions. (1) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

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(2) "Department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Eligible individual" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services.

(4) "Individual with a most significant disability" means an individual who has a significant disability and who:

(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or

(b) Has serious limitations in four (4) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

(5) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that:

(a) Is unlikely to be corrected through surgical intervention or medical treatment; and

(b) Differs from a mental or physical condition that can be remedied through the provision of a physical or mental restoration service.

Section 2. Economic Need. (1) Economic need shall be considered in determining whether to grant vocational rehabilitation services.

(2) The commissioner shall exempt services from the economic needs test if the department is able to provide services to all eligible individuals with significant

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disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 34 CFR 361.53.

(3) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

- (a) Physical and mental restoration services;
- (b) Tuition and initial registration fees for vocational and college training;
- (c) Maintenance other than diagnostic;
- (d) Transportation other than diagnostic;
- (e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;
- (f) Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;
- (g) Post-employment services other than (4)(a)-(m);
- (h) Tuition and initial registration fees for training beyond the baccalaureate level;
- (i) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of employment outcomes;
- (j) Vehicle and property modifications in excess of \$10,000.

(4) The following services shall be excluded from an economic needs test:

- (a) Assessment for determining eligibility and vocational rehabilitation needs;
- (b) Counseling and guidance;

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- (c) Services provided by staff at state owned and operated rehabilitation facilities;
- (d) Placement;
- (e) Rehabilitation technology [except as provided in (3)(j)];
- (f) Communication assistance in the individual's native language;
- (g) Books, supplies, tools and equipment for vocational and other training;
- (h) Supported employment;
- (i) Interpreter services for the deaf;
- (j) Reader services for the blind;
- (k) Personal assistance services;
- (l) Tutors, note takers, and assistive technology education aids; and
- (m) Other training, including driver training, on-the-job training; job coaching, job development and training.

(5) The department's economic needs test shall be based on the most current Kentucky Median Adjusted Gross Income developed by the U.S. Department of Commerce. If the individual has a monthly income that exceeds 100 percent of the most current median gross income, the individual shall apply the excess income to rehabilitation services necessary to achieve the employment goal except as provided for in 34 CFR 361.54.

Section 3. Order of Selection. If the commissioner determines that the department shall be unable to provide services to all eligible applicants, the department shall implement the order of selection.

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- (1) An eligible individual previously declared eligible for and receiving vocational rehabilitation services under an individualized plan for employment shall not be affected if the department implements an order of selection.
- (2) The order of selection shall not regulate the provision of information or referral services.
- (3) On implementation of the order of selection, the department shall continue to accept referrals of and applications from individuals with disabilities.
- (4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.
- (5) An applicant shall be declared eligible or ineligible as appropriate.
- (6) An eligible individual entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual shall be served. If the priority category is closed, the individual's case shall be held in accepted status until the priority category assigned is opened or the order of selection is lifted.
- (7) The order of selection policy shall permit immediate reclassification into a higher priority category if circumstances justify the reclassification.
- (8) If the department is unable to provide services to all eligible individuals with significant disabilities, the department shall serve eligible individuals with a most significant disability first and then serve eligible individuals with a significant disability on a first-applied, first-served basis, as established by the date of application.
- (9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

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(10) The order of selection system shall have six (6) priority categories as follows:

- (a) Priority I - eligible individuals with a most significant disability.
- (b) Priority Category II - eligible individuals with a significant disability who have serious limitations in three (3) functional capacities.
- (c) Priority Category III - eligible individuals with a significant disability who have serious limitations in two (2) functional capacities.
- (d) Priority Category IV - eligible individuals with a significant disability who have serious limitations in one (1) functional capacity.
- (e) Priority Category V - eligible individuals with a non-significant disability that results in permanent functional limitations.
- (f) Priority Category VI - all other eligible individuals whose disability is non-significant.

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